



June 20, 2019

Via ECFS

Marlene H. Dortch
Secretary, Federal Communications Commission
445 12th Street SW
Washington, D.C. 20554

Re: *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. §160(c) to Accelerate Investment in Broadband and Next-Generation Networks;*
WC Docket No. 18-141

Dear Ms. Dortch:

On June 18, 2019, the undersigned, along with representatives from multiple USTelecom members (“USTelecom representatives”), met with Tom Johnson, Ashley Boizelle, Doug Klein, and Marcus Maher (via teleconference) from the Office of General Counsel; and Ed Krachmer and Terri Natoli from the Wireline Competition Bureau in support of USTelecom’s Petition for Forbearance.¹ A list of participating USTelecom representatives is attached.

During the meeting, the USTelecom representatives reiterated their request for nationwide forbearance from Section 251(c)(3) unbundling requirements and related mandates, as well as from Section 251(c)(4)’s ILEC-specific resale mandate. Consistent with prior advocacy,² the USTelecom representatives emphasized that nationwide forbearance should be granted for analog DS0 loop unbundling requirements and for Section 251(c)(4) resale obligations. The record demonstrates that forbearance from these mandates is consistent with the public interest and that maintaining the requirements, relevant only to voice service in a highly competitive market, are not necessary to protect consumers or to ensure that rates are just and reasonable. Thus, the forbearance standard is easily satisfied.³

Also consistent with prior advocacy, the USTelecom representatives reiterated that if the Commission does not grant nationwide relief for unbundled loops, it should at a minimum, forbear from:

- Unbundling requirements for digital DS0 loops in census blocks featuring competition from a cable provider offering service at speeds of at least 25 Mbps downstream and 3 Mbps upstream; and

¹ Petition for Forbearance of USTelecom – The Broadband Association, WC Docket No. 18-141 (filed May 4, 2018) (“Petition”).

² Letter from Patrick Halley, Senior Vice President, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141 (filed May 6, 2019) (“May 6 Ex Parte Letter”).

³ 47 U.S.C. § 160 (“Section 10”).

- Unbundling requirements for DS1 and DS3 loops in (a) census blocks featuring competition from a cable provider offering service at speeds of at least 25 Mbps downstream and 3 Mbps upstream or (b) counties that have already been deemed competitive by the Commission in the Broadband Data Services (“BDS”) proceeding.

The Forbearance Test Is Easily Satisfied for Voice Services. During the meeting, the USTelecom Representatives explained that the highly competitive modern communications marketplace and the negative impact on consumers and competition of maintaining an outdated regulatory regime justify granting the Petition with respect to relief from analog DS0 loop unbundling requirements and the Section 251(c)(4) resale mandate.

First, forbearance from these elements is consistent with the public interest. As the statute demands, “[i]n determining whether forbearance is consistent with the public interest, the [Commission] ... must consider ‘whether forbearance ... will promote competitive market conditions.’”⁴ Where a given market is “subject to a significant amount of competition” and where “other regulatory safeguards” (such as the Section 201 and Section 202 prohibitions against unjust, unreasonable, or unjustly discriminatory rates and practices) exist to the point that enforcement of a given statute is “no longer necessary for the protection of consumers or to ensure [that parties do] not engage in unjust or unreasonable practices,” forbearance is “consistent with the public interest,” especially where forbearance “will increase the regulatory parity in the market.”⁵ As the Commission has repeatedly found, “disparate treatment of carriers providing the same or similar services is not in the public interest as it creates distortions in the marketplace that may harm consumers.”⁶

Second, maintaining analog DS0 loop unbundling and Section 251(c)(4) resale requirements is not necessary to protect consumers. As USTelecom and others have made clear, competition in the retail voice market is intense, entrenched, and expanding. ILECs currently serve only about one-tenth of the residential switched voice marketplace, and even as of 2017, cable companies had deployed service at 25/3 Mbps to almost 90 percent of the population and

⁴ *Petition of USTelecom for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of Certain Legacy Telecommunications Regulations et al.*, Memorandum Opinion and Order and Report and Order and Further Notice of Proposed Rulemaking and Second Further Notice of Proposed Rulemaking, 28 FCC Rcd 7627, 7632 ¶ 7 (2013) (citing 47 U.S.C. § 160(b)).

⁵ *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area et al.*, Memorandum Opinion and Order, 20 FCC Rcd 19415, 19453-56 ¶¶ 75-76, 78-83 (2005) (“*Qwest Omaha Order*”).

⁶ *Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Its Broadband Services*, Memorandum Opinion and Order, 22 FCC Rcd 18705, 18738 ¶ 68 (2007); *Petition of the Embarq Local Operating Companies for Forbearance Under 47 U.S.C. § 160(c) from Application of Computer Inquiry and Certain Title II Common-Carriage Requirements et al.*, Memorandum Opinion and Order, 22 FCC Rcd 19478, 19508 ¶ 60 (2007) (same); *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended (47 U.S.C. § 160(c)) et al.*, 22 FCC Rcd 16304, 16360 ¶ 129 (2007) (same).

90 percent of households.⁷ In the Commission’s words: “Consumers are increasingly able and willing to abandon their landlines in favor of communications technologies that do not rely on local telephone switches.”⁸ Moreover, this intermodal competition is not reliant on unbundled network elements or Section 251(c)(4) resale, which together account for a tiny sliver of the marketplace. As the Commission has repeatedly held, competition is the best means for protecting consumer interests and ensuring that prices are just and reasonable.⁹ Moreover, as USTelecom has argued previously, ILECs will continue to offer resold service on commercial terms – the type of resale that currently accounts for about 85 percent of all resale arrangements. Even customers that currently require TDM service will continue to have options following forbearance, whether from CLECs purchasing wholesale offerings, alternative competitive carriers, or from the ILECs themselves, whose prices will be constrained by fierce competition.

Of course, even setting aside the many options that will remain available to customers following a grant of USTelecom’s petition, nothing in Section 10 requires or suggests that *any* short-term harm to *any* group of consumers precludes forbearance – particularly where, as here, forbearance will benefit the great majority of consumers and advance the Commission’s deployment goals in ways that benefit *all* of them. In the *Triennial Review Remand Order*, the Commission recognized in the unbundling context that broader policy goals warrant cessation of regulation even when some CLECs might still face “impairment” without access to a particular element. In eliminating the unbundling obligation for mass market local switching, the Commission explained: “[R]egardless of any limited potential impairment requesting carriers may still face, we find that the continued availability of unbundled mass market switching would impose significant costs in the form of decreased investment incentives, and therefore we conclude not to unbundle...”¹⁰ There is no reason why the Act’s forbearance provision, which is specifically designed to eliminate regulation as competition evolves, would be subject to a stricter standard than those imposed in Sections 251 and 252 themselves.

Third, maintaining analog DS0 loop unbundling and Section 251(c)(4) resale requirements is not necessary to ensure just and reasonable rates. Congress established these mandates to open markets that had been characterized by monopolies – often state-enforced monopolies – for decades. In such markets, aggressive unbundling and resale mandates were intended to produce competition that would eliminate ILECs’ market power. As the record here demonstrates, that market power has been eliminated and ILECs face stiff competition with cable, wireless, and other rivals. Prices and practices are policed by competitive market forces,

⁷ See May 6 Ex Part Letter AT 2, 5, 8; Comments of AT&T, WC Docket No. 18-141 et al., at 3 (filed May 9, 2019).

⁸ *Technology Transitions et al.*, Declaratory Ruling, Second Report and Order, and Order on Reconsideration, 31 FCC Rcd 8283, 8289-90 ¶ 17 (2016) (internal citations omitted) (“*2016 Technology Transitions Order*”).

⁹ See, e.g., *Petition of U S WEST Communications, Inc. for Forbearance*, Memorandum Opinion and Order, 14 FCC Rcd 16252, 16270 ¶ 31 (1999) (stating that competition “is the most effective means of ensuring that ... charges, practices, classifications, and regulations ... are just and reasonable, and not unreasonably discriminatory”).

¹⁰ *Unbundled Access to Network Elements*, 20 FCC Rcd 2533, 2641 ¶ 199 (2005).

and ILECs lack any ability to raise rates above competitive levels. Likewise, as in other competitive markets characterized by high fixed costs, ILECs retain strong incentives to make their facilities available to resellers, in order to keep traffic on their networks and attract revenues that otherwise would accrue entirely to intermodal competitors. In short, competition is ensuring, and will continue to ensure, that the public interest is met. Forbearance can only advance that public interest, by fostering more deployment by ILECs, CLECs, and intermodal providers alike.

Please direct any questions to the undersigned.

Sincerely,

/s/ Patrick R. Halley

Patrick R. Halley

Senior Vice President, Policy & Advocacy

USTelecom – The Broadband Association

ATTACHMENT

USTelecom Representatives

- Patrick Halley, USTelecom
- Patrick Brogan, USTelecom
- Kristine Fargotstein, USTelecom
- Russ Hanser, Wilkinson Barker Knauer, LLP (Counsel to USTelecom)
- AJ Burton, Frontier
- Ken Mason, Frontier (via teleconference)
- Frank Simone, AT&T
- Keith Krom, AT&T
- Jackie Flemming, AT&T (via teleconference)
- Caroline Van Wie, AT&T (via teleconference)
- Katharine Saunders, Verizon
- Fred Moacdieh, Verizon
- Jeff Lanning, CenturyLink
- Craig Brown, CenturyLink (via teleconference)